

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BEYENE TEWODROS,

Petitioner,

-vs-

DECISION AND ORDER
17-CV-6655-CJS

MR. JEFF SESSION, Attorney General of the
United States, et al.,

Respondents.

Siragusa, J. Respondents have moved to dismiss Petitioner's habeas corpus petition filed on September 18, 2017, ECF No. 1. Motion to Dismiss, Jul. 10, 2018, ECF No. 12. The Court issued a decision and order on July 27, 2018, directing Respondents to serve Petitioner at his current location and file proof of service with the Court. Respondents have done so and more than fifteen days have passed since service. Petitioner has not responded to the motion.

Petitioner is no longer in the custody of the Federal Department of Homeland Security, Immigration, and Customs Enforcement ("DHS"). Consequently, this Court is without jurisdiction to grant Petitioner's petition. Accordingly, it is hereby

ORDERED, that Respondents' motion, ECF No. 12, is granted; and it is further

ORDERED, that the petition is hereby dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts; and it is further

ORDERED, that because the issues raised here are not the type of issues that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, the Court concludes that petitioner has failed to make a substantial showing

of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly the Court denies a certificate of appealability; and it is further

CERTIFIED, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith and the Court therefore denies leave to appeal as a poor person. *Coppedge v. United States*, 369 U.S. 438, 82 S. Ct. 917, 8 L.Ed.2d 21 (1962). Further, Petitioner must file any notice of appeal with the Clerk's Office, United States District Court, Western District of New York, within thirty (30) days of the date of judgment in this action. Requests to proceed on appeal as a poor person must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

DATED: October 4, 2018
Rochester, New York

Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge